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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 19—

No. 514

BILLIE CHARLINE GUESS, WIFE OF AND ADMINISTRATRIX OF THE ESTATE OF BENJAMIN FRANKLIN WILEY, JR.,

Petitioner,

versus

GEOFFREY STEWART READ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

DONALD V. ORGAN,
800 Royal Street,
New Orleans, Louisiana,
Counsel for Petitioner.

Of Counsel:
BRUMFIELD & ORGAN,
New Orleans, Louisiana.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

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Billie Charline Guess, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above entitled case.

OPINIONS BELOW.

No opinion of the District Court in *Guess v. Geoffrey Stewart Read* was written; the opinion of the Fifth

Circuit Court of Appeals in this case (Appendix I, *infra*, pages 19-24) is reported in 290 Fed. (2d) 622 (1961).

JURISDICTION.

The opinion of the Fifth Circuit Court of Appeals in *Billie Charline Guess v. Geoffrey Stewart Read*, No. 18,466, was entered on May 18, 1961, rehearing denied July 25, 1961 (Appendix I, *infra*, page 19). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED.

(1) When the United States Congress by reference states the law of a federal territory to be the law of the adjacent state, do the venue stipulations in the state's statutes prevent the law from being applied by federal court in the federal territory?

(2) Did the Congress of the United States in enacting the Outer Continental Shelf Lands Act, 43 USCA 1331, *et seq.*, and adopting therein the law of the adjacent state as applicable to the outer continental shelf, intend that the state law would apply only to the sea bed and not to the water covering it and the air over the water, or did the Congress intend that the state law where applicable and not in conflict with the federal law would be applied to the entire outer continental shelf, including the sea bed, the water covering it, and the air above the water?

(3) Is the Louisiana Direct Action Statute available to a litigant in an action arising out of the explora-

tion for oil on the outer continental shelf by virtue of the passage of the Outer Continental Shelf Lands Act providing that the law of the adjacent state extends to the subsoil and sea bed and the fixed structures thereon, the same as if the territory limits of the state were extended to include the outer continental shelf?

STATUTES INVOLVED.

(1) Outer Continental Shelf Lands Act, 43 USCA 1331, *et seq.*

(2) Death on the High Seas Act, 46 USCA 761, *et seq.*

(3) LRS 22:655, Louisiana Direct Action Statute.

STATEMENT.

Petitioner in this case is the widow of Benjamin Franklin Wiley, Jr., and it is his death that gives rise to this cause of action. Petitioner brought this suit in admiralty in the United States District Court for the Eastern District of Louisiana against Underwriters at Lloyds Subscribing the Policies of Liability Insurance Covering the United Aircraft Corporation represented herein by Geoffrey Stewart Read, respondent in this petition, under the Death on the High Seas Act, 46 USCA 761 (Appendix II). Petitioner's intestate, Benjamin Franklin Wiley, Jr., was an employee of Humble Oil & Refining Company, who were engaged in the exploration for oil nine miles southeast of Grand Isle, Louisiana, in the Gulf of Mexico, at latitude 29°6'13" and longitude 89°58'39" west. Petitioner's intestate lost his life dur-

ing the course of his employment when a helicopter in which he was a passenger crashed into the Gulf of Mexico shortly after leaving the drilling barge located at the above-stated position; all of which is more than a marine league from the shore of Louisiana but within the outer continental shelf. The respondents are insurers of United Aircraft Corporation which built and sold the aircraft. In her original libel, petitioner named United Aircraft Corporation as one of the defendants and the only defendant which would be liable for defects in the manufacture or design of the aircraft; that being a theory of the claim. The United Aircraft Corporation was successful in having the suit dismissed as to it for lack of jurisdiction, since it was not present in Louisiana. Thereupon petitioner amended her libel under Louisiana's Act giving direct action privileges against insurers, LRS 22:655 (Appendix III), and named as defendants Underwriters at Lloyds Subscribing the Policies of Insurance Covering United Aircraft Corporation, herein represented by Geoffrey Stewart Read. Read filed a motion to dismiss (Tr. p. 60).

This motion was based on the fact that this accident occurred in the Gulf of Mexico and outside of the territorial limits of the State of Louisiana. The respondent took the position that said Direct Action Statute provided only for suits against insurers in cases where the accident complained of occurred within the borders of the State of Louisiana, and therefore these underwriters could not be sued. An alternative position of the respondent in the Court below was that an insured could not be sued in admiralty on cases brought under the Death on the High Seas Act, 46 USCA 761 (Appendix

III, since there were no specific provisions in that Act for direct actions against insurers.

The petitioner's position was that, for purposes of this suit, the Louisiana Direct Action Statute becomes federal law by virtue of 43 USCA 1331, *et seq.*, otherwise known as the Outer Continental Shelf Lands Act, in Section 1333(a)(2), which provides in part:

> "To the extent that they are applicable and not inconsistent with this act or with other federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent state as of the effective date of this act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the state if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

Petitioners also claimed, regarding actions against underwriters in admiralty, the fact that one is an insurer gives it no special immunity from suits in admiralty and under the Death on the High Seas Act, as long as an underwriter is a legal entity and there is otherwise stated